REMARKS/ARGUMENTS

At the outset, the courtesies extended by the Examiner in granting the telephone interview of 25 October 2006 is appreciatively noted. During the telephone interview, the references cited by the Examiner in the 9 August 2006 Office Action were discussed in light of the clarifying amendments proposed to the pending Claims by the undersigned Attorney, as set forth herein.

Responsive to the 9 August 2006 Office Action and the discussions had during the telephone interview, Claims 38, 45 and 52 are now amended for further prosecution with the other pending Claims. It is believed that with such amendment of the Claims, there is a further clarification of their recitations.

In the Official Action, the Examiner objected to the Specification under 35 U.S.C. § 132(a) stating that the Specification introduced new matter into the Disclosure. In response to this objection, the Specification has been amended to remove the added material which the Examiner stated was not supported by the original disclosure.

In the Official Action, the Examiner objected to Claims 49-50 and 56-57 as being improper dependent claims for failing to further limit the subject matter of a previous claim. In response to this objection, Claims 49-50 and 56-57 have been canceled.

In the Official Action, the Examiner rejected Claims 38-39, 42-46, and 49-51 under 35 U.S.C. § 103(a) as being unpatentable over the Marshall reference in view

of the McAvinn, et al. reference. Additionally, the Examiner rejected Claims 40-41 and 47-48 under 35 U.S.C. § 103(a) as being unpatentable over the Marshall reference in view of the McAvinn, et al. reference and further in view of the DeBusk reference. The Examiner also rejected Claims 52-53 and 56-57 under 35 U.S.C. § 103(a) as being unpatentable over the McAvinn, et al. reference. In setting forth these rejections, the Examiner acknowledged that the Marshall reference did not disclose the thread to be of a different color than the fabric for stitching the hem and the thread color to be visually identifying the surgical towel as X-ray detectable. However, the Examiner stated that at the time the invention was made, it was well known for thread to be a different color than the fabric and it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the article of Marshall to include a thread color different from the fabric.

As newly-amended independent Claims 38, 45 and 52 each now more clearly recite, Applicant's surgical towel includes among its combination of features a "synthetic or cotton yarn sewing thread" of a different color than the color of the fabric for stitching the hem. The use of the synthetic or cotton yarn sewing thread allows the surgical towel to be identified as an X-ray detectable towel "when said surgical towel is external to a patient's body" as each of the newly-amended independent Claims 38, 45 and 52 also now more clearly recites. Furthermore, the surgical towel includes identifying characteristics "chosen from the group consisting of a predetermined shape, a predetermined coding indicia, and a predetermined

number indicia", as the newly-amended independent claims now more clearly recite.

The full combination of these and other features now more clearly recited by Applicant's pending Claims is nowhere disclosed by the cited references. As the Examiner readily acknowledged, the primarily-cited Marshall reference fails to disclose the thread to be a different color than the fabric to allow the surgical towel to be identifiable as X-ray detectable. Even beyond this, Marshall's medical sponge does not provide any means of visually identifying the article as having X-ray detectable material incorporated therein. Although it may be a simple concept, in use, such is important to a surgeon or other medical personnel who would have no way of visually knowing whether or not they were using an article with an X-ray detectable material incorporated into the article versus an article without such material added. Conventionally used operating room towels do not come standard with X-ray detectable elements, thus incorporating such is an unappreciated advantage.

Referring to the McAvinn, et al. reference, the focus of the reference is to identify the surgical sponge while inside the body. McAvinn, et al. incorporates a visually detectable element 22 that is highly reflective and has a color which contrasts with the color of blood. The thread is substantially **non-radiopaque to X-rays** and has a central layer 24 of metallic material, such as aluminum foil or stainless steel. The focus of the McAvinn, et al. reference is to have the surgical sponge stand out when inside a patient's body and covered with blood.

Nowhere does the reference contemplate having the surgical sponge stand out when such is outside or external to a patient's body. There is no certainty with the device of McAvinn that such would be detectable as an X-ray detectable sponge, a purpose accomplished by the subject Patent Application. Even beyond this, the reference does not contemplate the use of synthetic or cotton yarn sewing thread (as the use of a central metallic COMPOSITE can hardly be considered synthetic) as now clearly recited by Applicant's pending claims. Furthermore, the McAvinn, et al. reference teaches away from such synthetic or cotton yarn sewing material by incorporating metallic portions which have inherent dangers of causing harm when inside of a patient's body. The metal portions of the sponge could become undone and puncture or damage internal organs, vessels, veins or arteries or even stitches that are already in place. Inferring that the reference suggests that the sponge has synthetic or cotton yarn sewing thread or that it is visually detectable outside a patient's body can only be done by impermissible hindsight.

Yet further, none of the references disclose or even suggest, "...identifying characteristics chosen from the group consisting of a predetermined shape, a predetermined coding indicia, and a predetermined number indicia...". The predetermined shape may be, for example, a "T" representing a towel, a "L" representing a lap sponge, a "G" representing gauze, etc. Additionally, the identifying characteristics may also be coding with a predetermined number representing the size of the towel. The indicia identifies the surgical towel

specifically when inside of a patient's body and viewed by X-ray detectable mechanisms.

Given such contrary and deficient teaching of the Marshall and McAvinn, et al. references, the secondarily-cited DeBusk reference is found to be quite ineffectual to the present patentability analysis. DeBusk was merely cited for disclosing isolated features but does not remedy the deficiencies of the Marshall and McAvinn, et al. references.

It is respectfully submitted, therefore, that the cited Marshall, McAvinn, et al. and DeBusk references, even when considered together, fail to disclose the unique combination of elements now more clearly recited by Applicant's pending Claims for the purposes and objectives disclosed in the subject Patent Application. In fact, the references teach quite clearly away from the claimed subject matter in certain notable respects, such as the use of metallic portions and the lack of having an X-ray detectable towel visually identifiable when external to a patient's body.

The other references cited by the Examiner but not used in the rejection are believed to be further remote from Applicant's claimed surgical towel when patentability considerations are taken properly into account.

It is now believed that the subject Patent Application has been placed in condition for allowance, and such Action is respectfully requested.

No fees are believed to be due with this Amendment. If there are any fees associated with this filing, the Honorable Commissioner for Patents is hereby authorized to charge Deposit Account #18-2011 for such charges.

Respectfully submitted,
For: ROSENBERG, KLEIN & LEE

Morton J. Rosenberg
Registration #26,049

Rajiv S. Shah
Registration #56,247

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Suite 101
3458 Ellicott Center Drive
Ellicott City, MD 21043
(410) 465-6678
Customer No. 04586